IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7620 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DASHRATHJI MANGAJI MARWADI PADHIYAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7620 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR RS CHHAYA for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of

an order dated July 25, 2001 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a dangerous person.. The detaining authority has considered two offences registered against the detenu. The detaining authority has also considered statements of anonimous witnesses recorded on July 20, 2001 and have come to the conclusion that the petitioner is required to be detained under the PASA Act.

3. Learned Advocate Mr. Prajapati appearing for the petitioner mainly relies on the fact that the detaining authority passed the order ignoring the fact that the detenu was in Police custody in both the cases registered against him when the order of detention was passed. He therefore urged that the satisfaction recorded by the detaining authority for need for exercise of power under Section 3 of the PASA Act and immediate requirement for detaining the detenu cannot be considered as genuine. It would therefore stand vitiated and the order of detention therefore may be quashed.

4. Learned AGP Mr. D.P. Joshi has opposed this petition.

5. Having regard to the contentions raised before this Court, a plain reading of the grounds of detention indicate that the detenu was in Police custody. The detaining authority observed that when he is produced before the Court, he may apply for bail and may get himself released on bail after the order was passed by the Court and may thereafter pursue his illegal activities. Getting bailed out is different than applying for bail. In the instant case, the stage for application of bail had also not even reached. The detenu was in Police custody and therefore, the order would stand vitiated on this ground alone in view of the decision of the apex Court in Amritlal and ors. Vs. Union Government, reported in AIR 2000 SC 3675.

6. The petition is therefore, allowed. Order of detention dated 25th July, 2001 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad is quashed and set aside. Detenu Dashrathji Mangaji Marwadi (Padhiyar) be released from detention forthwith, if not required in any other case. Rule made absolute. No

costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas